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OFFICE OF PETITIONS

In re Application of :
Cubukcu, et al. :
Application No. 10/612,330 : ON PETITION
Filed: July 2, 2003 :
Attorney Docket No. 21980-04012 :

This is a decision on the "PETITION UNDER C.F.R. §1.181 TO WAIVE REQUIREMENT FOR NEW DECLARATION", filed January 2, 2008, which is properly treated as a petition under 37 C.F.R. §1.183.

The petition under 37 C.F.R. §1.183 is **DISMISSED**.

The Office mailed a final Office action on October 2, 2007. The final Office action required a new oath or declaration. The Office action stated that the declaration was defective because it did not state that the person making the oath or declaration believes the named inventor or inventors to be the original inventor or inventors of the subject matter which is claimed and for which a patent is sought.

Applicants have filed the instant petition, seeking waiver of the requirement for a new declaration. Applicants request the Commissioner to determine that the declaration satisfies all requirements of 37 C.F.R. §1.63(a)(4) and 35 U.S.C. 115.

37 C.F.R. 1.183 states:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h) (emphasis added).

Furthermore, 35 U.S.C. 115 states that "the applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent". 35 U.S.C. 115 is a statutory requirement and its requirements can not be waived.

Telephone inquiries regarding this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo
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Office of Petitions